

**Testimony of Alexander Wood in opposition to Section 6 of Bill
No. 846, concerning secrecy in the pardons process**

Judiciary Committee, March 22, 2013

My name is Alexander Wood. I am a reporter for the Journal Inquirer in Manchester. I am here to speak in opposition to Section 6 of Bill Number 846, which provides, in essence, that "any application, report or other record" submitted to the Board of Pardons and Paroles "with respect to the granting of a pardon shall be confidential"

This section is a direct response to a freedom-of-information request I filed on November 29 of last year seeking all documents considered by pardon panels with respect to a few selected applications that had been considered at meetings earlier that month. The request for those records was denied without any citation of legal authority. Section 6 of Bill 846 is an apparent attempt to justify that denial retroactively and to block any future similar request.

I respectfully submit that this proposal is extremely misguided. The U.S. Supreme Court said in a 1981 decision that "Connecticut has conferred 'unfettered discretion' on its Board of Pardons" *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 466 (1981). Although the structure and name of the pardons board has changed since then, it is my understanding from my own review of the statutes and from discussions with people who work with this process regularly that the "unfettered discretion" remains in place with respect to absolute and conditional pardons, except for timing restrictions. See C.G.S. Section 54-130a (a) (b) (c) and (f). "Unfettered discretion" is another way of saying unfettered power. I

respectfully submit that a process in which decision makers have that kind of power is precisely the kind of process that needs public scrutiny in a democracy.

Bill 846 would not only block public inspection of the records considered in connection with pardon applications, it could also be used to close virtually all meetings of pardon panels. That's because the Freedom of Information Act permits public agencies to hold executive sessions to discuss any matter that would result in disclosure of the information in public records that are exempt from disclosure.¹

Hearings on pardon applications are now conducted in public. Because applicants are often questioned about the records the pardon panel has before it, Bill 846 would apparently allow the panel to hold those hearings in executive session. My apologies if I have overlooked some provision of the General Statutes, but it is my understanding that even the victim of the applicant's crime could be excluded, except when addressing the pardon panel.

For the same reason, the bill would allow pardon panels to close their discussions of applications. Those discussions are now

¹ C.G.S. Section 1-200 (6) (E) permits an executive session for "discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210." Although the confidentiality provision proposed in Section 6 of Bill Number 846 would be in C.G.S. Section 54-130a, rather than Section 1-210 (b), it would still permit executive sessions. That's because C.G.S. Section 1-210 (b) (10) essentially incorporates all confidentiality provisions found elsewhere in the statutes by exempting from mandatory disclosure, among other things, "records, tax returns, reports and statements exempted by federal law or state statutes"

conducted in executive session, but I think the legal rationale for at least some of those executive sessions is questionable, and I have filed a complaint with the Freedom of Information Commission over this issue.

There is obviously a tension between the goal of open government that is accountable to the public and the goal of pardons, which is to allow rehabilitated offenders to escape the stigma of a criminal conviction. Under current law, when a person gets an absolute pardon, "all police and court records and records of the state's or prosecuting attorney" pertaining to the person's criminal case are erased. C.G.S. Section 54-142a (d) (1) and (2). Pardon board records are not erased, however, which appears to reflect a recognition of the need for public scrutiny of this process. Balancing the goals of open government and of pardons is not an easy task. But Bill 846 doesn't attempt to balance those goals. It simply slams the door on public scrutiny.

Because of the complexity of this issue, I suggest that all stakeholders in the pardon process sit down together to discuss the appropriate roles of public disclosure and of privacy in the process. I think this could be done informally, without the need for legislation or the expenditure of any significant funds. If the governor's administration and the Board of Pardons and Paroles would be willing to agree to such an approach — and would agree not to pursue Section 6 of Bill 846 this year — I would be willing to withdraw my two pending cases against the board at the Freedom of Information Commission, participate in these discussions, and file no new FOI cases while the discussions are in progress. I hope everyone

involved will take the approach of discussion and compromise rather than the approach of confrontation.

I thank the committee for its time and am ready to answer any questions.